

STATE OF NEW HAMPSHIRE



New Hampshire Personnel Appeals Board

Fiscal Year 2015 Annual Report

**Prepared Pursuant to
NH RSA 21-I:46 VI**

By Its Members and Alternate Members:

**Chair Charla Stevens, Esq.
Vice Chair Norman Patenaude, Esq.
Commissioner Christopher Nicolopoulos, Esq.
Commissioner David Goldstein**

And

**Administrator of the NH Personnel Appeals Board:
Steven Bunker**

Acknowledgments

Governor

Margaret Wood Hassan

Members of the Executive Council

Joseph D. Kenney, District 1

Colin Van Ostern, District 2

Christopher T. Sununu, District 3

Christopher C. Pappas, District 4

David K. Wheeler, District 5

Commissioner of Administrative Services

Vicki Quiram

Director of Personnel

Sara Willingham

Division of Personnel Staff

Steven Bunker

Stephanie Haynes

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RSA 21-I:46 VI

“The board shall by September 1 of each year submit an annual report to the governor, commissioner of administrative services, and director of personnel. This report shall include a narrative summary of the work of the board during the previous fiscal year. The report shall also include a description of problems related to the personnel system and the board's recommendations for dealing with those problems.”

NEW HAMPSHIRE PERSONNEL APPEALS BOARD

Terms of Appointment

Members/Alternates Currently Serving

CHARLA STEVENS, Esq., Bedford

Chair

June 2, 2014 to June 2, 2017

NORMAN PATENAUDE, (Alt.) Esq., Portsmouth

Vice Chair

May 23, 2014 to September 24, 2016

CHRISTOPHER NICOLOPOULOS (Alt.) Esq., Bow

June 10, 2015 to September 24, 2016

DAVID GOLDSTEIN, Dover

April 9, 2014 to June 2, 2018

There is currently one (1) seat vacant on the Board.

*NOTE – RSA 21-I:45 provides for the appointment of three (3) regular members and two alternates. **Except for a brief period from December 3, 2008 to May 29, 2009 at least one seat on the Board has been vacant since 2004.**

BOARD COMPOSITION AND DUTIES

RSA 21-I:45 Composition of Board; Compensation; Removal.

There is hereby established a personnel appeals board as follows:

I. The board shall consist of 3 members, not more than 2 of whom shall be from the same political party. There shall also be 2 alternate members of the board, not more than one of whom shall be a member of the same political party. At least 2 members of the board shall have been gainfully employed as a labor relations or personnel professional for a minimum of 5 years. One member shall have been employed within the public personnel field of employment for a minimum of 3 years. Each member and alternate shall be appointed by the governor with the consent of the council for a term of 3 years, and a person appointed to fill a vacancy shall be appointed for the unexpired term. Each member of the board and alternate shall hold office until his successor is appointed and qualified. The governor shall designate one member as chairman of the board. The board shall elect one member to serve as vice chairman. Either the chairman or vice chairman shall be a member of the New Hampshire bar. No member of the board shall be a member of any state or national committee of a political party, nor an officer or member of a committee in any partisan political club or organization, nor shall hold, or be a candidate for, any remunerative elective public office during his term of office and shall not be otherwise employed in any of the agencies of the state government.

II. Members of the board shall each be paid \$100 for each day devoted to the work of the board, but not more than \$5,000 each in any one year. They shall be reimbursed for necessary expenses in connection with their official duties.

III. Members of the board shall be removed only as provided in RSA 4:1.

Although the Board members understand that their appointment to the Board is not lucrative, it should be noted that the per diem pay for each board member has not increased since June 29, 1988, over twenty-seven (27) years ago. Many of the cases that come before the Board involve complex facts, arguments and legal issues that often require several days of testimony followed by thoughtful and time-consuming deliberation among the Board members. As such, it is imperative to the integrity of the appeals process to be able to recruit and retain qualified attorneys/persons to serve on the Board.

The Board is a quasi-judicial body that requires either the Chair or Vice Chair to be a member of the New Hampshire Bar. RSA 21-I:45 also requires that two (2) Board members shall have been gainfully employed as a labor relations or personnel professional for a minimum of 5 years and one member shall have been employed within the public personnel field of employment for a minimum of three (3) years. Needless to say, it is expected that each Board member have the knowledge, experience and expertise to render thoughtful and just decisions.

At present, three (3) of the four (4) members of the Board are members of the New Hampshire Bar. According to the New Hampshire Bar News (January 21, 2015) the median billing rate reported for New Hampshire Attorneys in 2014 was \$225 an hour, up 28% from 2005.

The current per diem pay for Board members (\$100.00 for each day but not more than \$5,000 each in any one year) calls to question whether or not the Board can be successful in recruiting qualified and competent Board members, especially attorneys, who can earn more than twice as much money in one (1) hour of work than a Board member earns in an entire day of work for the Board. It seems reasonable to question if this is at least part of the reason at least one seat on the Board has been vacant since 2004,

except for a brief period of time from December 3, 2008 through May 29, 2009.

As of June 30, 2015, there are four (4) Board members. Not having a fifth member of the Board puts an incredible amount of strain and pressure on the four (4) members to do their very best to make sure that appeals are heard in a timely manner so that justice is not delayed. It is a concern that the Board members' schedules will not always allow a hearing to be heard in a timely manner or if the appeal requires more than one scheduled day of testimony, that the second day will not be in close proximity of the first. As a result, this requires the Board to review and become familiar with the file once again prior to the second day of testimony.

Under the circumstances and considering the expectations of RSA 21-I:45, it would be reasonable and appropriate to increase the daily per diem rate to \$250 per day and the annual per diem pay to \$10,000.00. The Board intends to file appropriate legislation to effectuate this change.

RSA 21-I:46 Powers and Duties of Board.

The board shall meet as often as necessary to conduct its business, provided that no more than 30 days shall elapse between meetings whenever there is any appeal pending before the board. Two members of the board shall constitute a quorum.

BOARD DEVELOPMENTS FOR FY 2015

During Fiscal Year 2015, former Chairman, Joseph Casey resigned on April 22, 2015 after serving over nine (9) years on the Board. His service and dedication to the Board is greatly appreciated. Commissioner Christopher Nicolopoulos, Esq., was appointed on June 10, 2015 and Charla Stevens, Esq., was appointed Chair of the Board on July 1, 2015. The fifth seat on the Board remains vacant. The fifth seat has so remained since 2004, with the exception of a brief period of time from December 3, 2008 through May 29, 2009.

The Board underwent a change when Mary Ann Steele, Administrator to the Board, retired and was replaced by Daniel St. Hilaire in May 2014. In October 2014 Daniel St. Hilaire resigned and took another position within the State. Steven Bunker was hired as the new Administrator of the Board in June 2015.

CASE LOAD AND SCHEDULING

The Board continues to schedule Pre-Hearings and Hearings on the Merits as timely as possible, taking into account the schedules of the four (4) current Board members. Cases filed for FY 2015 and trends follow below.

Statistical Information Appeals Received During FY 2015 (Arranged by Department)

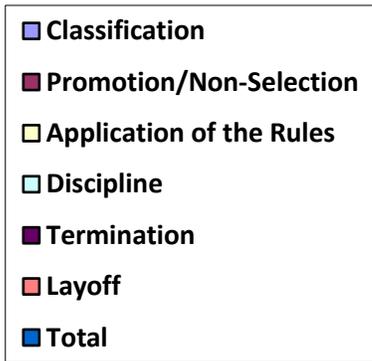
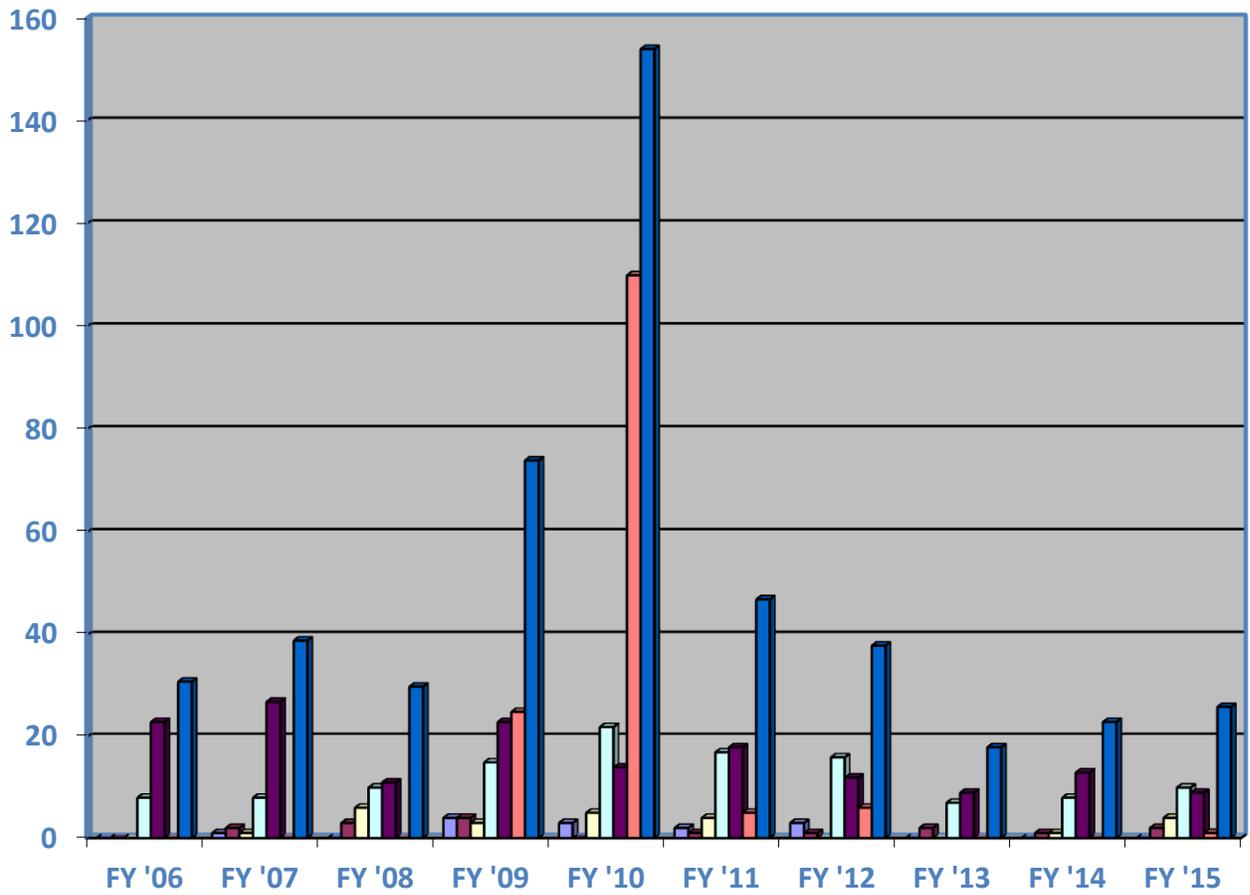
Docket #	Description	State Agency
2015-T-004	TERMINATION	DEPT OF ADMIN SERVICES
2015-T-006	TERMINATION	DEPT OF ADMIN SERVICES
2015-D-002	SUSPENSION W/O PAY	OFFICE OF LICED HEALTH PROFESSIONALS
2015-T-008	TERMINATION	DEPT OF CORRECTIONS
2015-P-002	NON –SELECTION	NH EMPLOYMENT SECURITY
2015-L-001	DEMOTION IN LIEU OF LAYOFF	DHHS
2015-L-002	REASSIGNMENT IN LIEU OF LAYOFF	DHHS
2015-L-003	REASSIGNMENT IN LIEU OF LAYOFF	DHHS
2015-L-004	REASSIGNMENT IN LIEU OF LAYOFF	DHHS
2015-L-005	LAYOFF	DHHS
2015-D-001	LETTER OF WARNING	DHHS
2015-D-008	LETTER OF WARNING	DHHS
2015-T-002	TERMINATION	DHHS
2015-P-001	NON-SELECTION	DHHS
2015-T-003	TERMINATION	DEPT OF SAFETY
2015-T-007	TERMINATION	DEPT OF SAFETY
2015-D-005	SUPSENSION W/O PAY	DEPT OF SAFETY
2015-D-006	SUSPENSION FROM DETAIL LIST	DEPT OF SAFETY
2015-D-009	LETTER OF WARNING	DEPT OF SAFETY
2015-D-010	LETTER OF WARNING	DEPT OF SAFETY
2015-T-005	TERMINATION	DEPT OF REVENUE
2015-O-001	APPLICATION OF RULES	NH LIQUOR COMMISSION
2015-T-001	TERMINATION	NH LIQUOR COMMISSION
2015-D-003	LETTER OF WARNING	NH LIQUOR COMMISSION
2015-D-004	LETTER OF WARNING	NH VETERANS HOSPITAL
2015-D-007	LETTER OF WARNING	DEPT OF TRANSPORTATION

Representation of Parties at Appeals Board Proceedings

Representatives	FY '11	FY '12	FY '13	FY '14	FY '15
Pro Se	15	8	4	4	3
Private Attorney	4	4	4	3	6
State Employees Association, Troopers Association, NEPBA or Teamsters	28	26	10	16	17

Ten-Year History of Appeals Filed

	FY '06	FY '07	FY '08	FY '09	FY '10	FY '11	FY '12	FY '13	FY '14	FY '15
Classification	0	1	0	4	3	2	3	0	0	0
Promotion/Non-Selection	0	2	3	4	0	1	1	2	1	2
Application of the Rules	0	1	6	3	5	4	0	0	1	4
Discipline	8	8	10	15	22	17	16	7	8	10
Termination	23	27	11	23	14	18	12	9	13	9
Layoff	-	-	-	25	110	5	6	0	0	1
Total	31	39	30	74	154	47	38	18	23	26



NARRATIVE

During the course of Fiscal Year 2015, the Board received twenty-six (26) new appeals. This was a 13% increase over the prior year. The Board held 27 Prehearing conferences and Hearings on the Merits. The Board also met on two occasions to remain in compliance with RSA 21-I:46.

Because the Board lacked a quorum in fiscal year 2014, the Board met only during a four month period of time in fiscal year 2014. This created a backlog of cases to be heard by the present Board. The Board gives scheduling priority to those cases that involve an immediate loss of compensation, such as a termination or otherwise.

The time between filing an appeal and the final resolution is not always determined by the availability and the scheduling of the Board. The scheduling is often affected by one or both of the parties, who are either represented or pro se. A prehearing or final hearing may be continued at the request of either party for such reasons as unavailability of either party or their representatives, unavailability of a witness, discovery issues, attempts to settle the case before the final hearing, etc. As a result of the continuance, it is sometimes necessary and requested by the parties to schedule a further prehearing conference, which further pushes out the date for the final hearing on the merits. The Board, however, continues to strive to ensure that the appeals are heard in a timely manner.

PUBLIC ACCESS TO RECORDS AND PROCEEDINGS

Documents submitted to the Board including hearing requests, pleadings and attachments, are exempt from disclosure under the provisions of RSA 91-A:5, IV, unless and until those documents are presented to the Board and admitted into the record at a public hearing, as those records include personnel records and records pertaining to internal personnel practices. Once those documents are introduced in a public hearing,

however, they are included in the public record required by RSA 21-I:42, IX (a)(3) and RSA 541-A, and they are open to public inspection unless otherwise exempt from disclosure by Court order, by order of the Board, or as described by RSA 91-A:5, IV.

In order to remind parties that their submissions and the Board's decisions are readily available to the public, the Board's web page provides the following caution:

"Hearings are open to the public. In most cases, documents that a person files as an attachment to an original appeal, or as evidence in an appeal, become public records. As such, agencies and employees filing appeals need to be careful about releasing any documents that they would not want published and available to the general public."

Employees can opt to go through an informal settlement process prior to having a full hearing before the Board. This process is not open to the public and is encouraged as a way for parties to resolve their disputes before going before the Board for disposition.

Electronic Archives

Before 2008, the Board kept hard-copy files that included all submissions, notices, pleadings, exhibits and decisions for each appeal filed, as well as copies of tape recordings for each hearing conducted. When its amended rules were adopted in 2008, the Board included provisions concerning retention of records, whereby parties could retrieve their copies of exhibits once a final deadline for further appeal had passed. Those exhibits not returned to the parties could then be eliminated, reducing the Board's file of the appeal to copies of pleadings and decisions. In 2009, the Board began purging its hard-copy files, replacing the original appeals, pleadings and decisions with an electronic copy maintained on CD. The vast majority of the Board's old archived pleadings and decisions have since been scanned, and the paper records shredded and recycled.

BOARD TRAINING AND OTHER DUTIES

Pursuant to statute, all new Board members are required to undergo training. Board Administrator Steven Bunker and Commissioner Christopher Nicolopoulos, Esq. reviewed appropriate training materials together.

In addition, pursuant to statute, the Board is required to review any new rule changes made to the Personnel Rules. The new Personnel Rules, which became effective May 17, 2015, have been provided to the Board for their review.

APPEALS DECIDED, DISMISSED, SETTLED OR WITHDRAWN DURING FY 2015

DOCKET #	AGENCY	ACTION APPEALED	DECISION
2013-D-003	DEPT OF SAFETY	SUSPENSION W/O PAY	UPHELD
2013-P-002	DEPT OF SAFETY	NON-SELECTION	DISMISSED
2013-D-004	DHHS	DISCIPLINARY DEMOTION	WITHDRAWN
2014-P-001	DHHS	NON-SELECTION	WITHDRAWN
2014-D-005	LIQUOR COMMISSION	LETTER OF WARNING	WITHDRAWN
2014-D-006	DEPT OF SAFETY	LETTER OF WARNING	WITHDRAWN
2014-T-003	DEPT OF CORRECTIONS	TERMINATION	WITHDRAWN
2014-T-004	DEPT OF SAFETY	TERMINATION	DISMISSED
2014-T-006	DEPT OF TRANSPORTATION	NON-DISCIPLINARY REMOVAL	WITHDRAWN
2014-T-007	DEPT OF CORRECTIONS	TERMINATION	WITHDRAWN
2014-T-009	DEPT OF TRANSPORTATION	TERMINATION	WITHDRAWN
2014-T-011	LIQUOR COMMISSION	TERMINATION	DISMISSED
2015-P-001	DHHS	NON-SELECTION	WITHDRAWN
2015-O-001	LIQUOR COMMISSION	WAGE DISPUTE	WITHDRAWN
2015-D-003	LIQUOR COMMISSION	LETTER OF WARNING	WITHDRAWN
2015-D-004	NH VETERANS HOME	LETTER OF WARNING	WITHDRAWN
2015-D-006	DEPT OF SAFETY	TEMPORARY SUSPENSION	DISMISSED
2015-D-009	DEPT OF SAFETY	LETTER OF WARNING	WITHDRAWN
2015-T-001	LIQUOR COMMISSION	TERMINATION	DISMISSED
2015-T-002	DHHS	TERMINATION	DISMISSED
2015-T-004	DEPT OF ADMIN SERVICES	TERMINATION	WITHDRAWN
2015-T-008	DEPT OF CORRECTIONS	TERMINATION	WITHDRAWN

DECISIONS OF THE NH SUPREME COURT

The matter of Derek Holston was appealed to the New Hampshire Supreme Court in FY 2015 and the case was accepted.

OBSERVATIONS AND RECOMMENDATIONS FOR IMPROVEMENT OF THE PERSONNEL SYSTEM

RSA 21-I:46, VI, requires the Personnel Appeals Board to include a section in its annual report describing the Board's observations about problems related to the personnel system and its recommendations for dealing with those problems. In the past, prior Boards have addressed a variety of issues, including position classifications, performance evaluations, workforce development, strategic planning, discipline, due process, communications, legislative funding decisions, and transparency in government. The current Board will address issues as they arise and report on them in future annual reports.

Additionally, the Board will monitor the rule changes that became effective May 17, 2015. The Board will also continue to advocate for the appointment of a fifth commissioner in order for individual Board members to experience less scheduling pressures and so that cases can be adjudicated in a more expeditious manner.